CITY NEWS IN BRIEF

THE OREGONIAN'S TELEPHONES.

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AMUSEMENTS.

COLUMBIA THEATER (14th and Washington) -Evening at 8, "Dora Thorns." EMPIRE THEATER (12th and Morrison)-Mat-inse at 2:15 and evening at \$:15. "Ten Nights in a Bar-room."

STAR THEATER (Park and Washington)-Continuous vaudavills, 2:30, 7:50 and 9 P. M.

GRAND THEATER (Park and Wushington) -Continuous vaudevills, 2:30 to 10:30

BAKER THEATER (5d and Tamhili)-Con-linuous vaudeville, 2:30, 7:30 and 9 P. M.

TALKED OF THE NEW ASSESSMENT PLAN -Raiph Feeney, past grand master of the Oregon jurisdiction, A. O. U. W., gave an address last evening hefore the Bunny-side Lodge on the new assessment plan. Mr. Forney undertook to show that the salvation of the order required that the change should be made and that the the higher ages. He said, among other things, that as the plan is studied and better understood it will be favored by

Would BE CITY VETERINART.-Dr. C. E. Brown, D. V. S., D. C. M., is the signature attached to a letter received yesterday afternoon by the Executive Board in which it announced that the writer is a candidate for the office of City Vet-erinary. This is not an elective office and under appointment receives a salary of \$10 a month only, consequently the Board does not know what to do with the

DAILY HOLY WERK SERVICES .- The noon meeting in the Men's Resort, Fourth and Burnside, will be addressed by G. C. Nicholson, beginning at 12 o'clock and lasting from 20 to 20 minutes. The even-ing service in St. Mark's Church, Nine-teenth and Quimby streets, begins at 7:45 o'clock, and Rev. W. A. M. Breck is the tonight. All are welcome to reacher these services.

WILL DISCUSS APOCRYPHA.-At a meeting of a class of apocryphal literature, under the auspices of the Council of Jew-ish Women, to be held this afternoon, at 2:86 o'clock in the Selling-Hirsch Hall, the books of Baruch, the Epistle of Jere-miah and additions to Esther will be considered and discussed. All interested in Bible study are invited to attend.

DIES OF HEART DISEASE .- A. J. Smith, aged 63 years, died yesterday morning of heart disease. He was found by his wife on the lower dock at the foot of Main street. Death was very sudden. Coroner Finley, after investigating, decided to hold no inquest. Smith had long resided in the city and until recently conducted a small coffee house.

PIONEER IS BURIED.-The funeral of "Uncle" George Griffith, a California ploneer of 1849, who came to Oregon in 1852, took place yesterday afternoon from Dun-ning's undertaking chapel. The interment was in Lone Fir Cemetery. Services in the chapel were attended by many of the old residents who had known "Uncle" George for the past 40 years.

WANT TO VOTE ON THE LIQUOR QUES-TION .- Petitions are being circulated in Arleta, on the Mount Scott railway, by members of the Law and Order League asking for another vote on the liquor question at the June election. At the November election this precinct voted "wet," but the prohibition people are not satisfied with that vote.

SHARESPEARE DAY AT FORUM .- Sunday, April 22, being the birthday of Shakes-peare, the People's Forum will celebrate this event in the evening by a programme consisting of an address, readings from the plays of Shakespeare, and the ren-dering of some Shakespearean songs. The numbers of the programme will be an-numbers of the programme will be announced later.

FOR COUNCILMAN-AT-LARGE. - Petitions are being circulated to make D. Kellaher a candidate for the nomination of Councliman-at-Large on the Remiblican ticket Mr. Kellaher is a Grand-avenue business man. J. T. Wilson, of Sunnyside, has filed his declaration to become a candi-date for Councilman from the Eighth

Jail, and were subsequently released on \$150 cash ball each. The Sheriff, when he Side cash ball each. The Sheriff, when he arrested the man who calls himself Smith, took from him a telegram addressed to Tony Clarke, and a card containing the names of certain horses. Clarke denied that he was selling pools, and asked a reporter: "Can a man be arrested for writing his name in a book on the street?" The newspaper man didn't know, and Sheriff Word asid the men were not ar-rested for such an offense, and he thought he could prove they were engaged in sell-ing pools. Gamblers say this recent ac-tion on the part of Sheriff Word is an at-tempt to influence the decision of the Su-preme Court in the Nease poolroom case. Court Will Announce Its Dene Court in the Nease poolroom case, which is soon to be handed down. They nguire why the Sheriff did not before other the handbook men, who have been aing business on the streets for months

Beatrice Dierke's TECHNICALITY OF DEFENSE Piano Recital

Prelude and fugue in E minor (Mendelssohn) It Causes District Attorney Heney to Prelude and fugue in E minor (Mendelsschn); valse in C sharp minor, op. 64, No. 2 (Cho-pin); valse in E minor (Chopin); ''Chant Pol-onaise (Chopin); mazurka, op. 67, No. 4 (Cho-pin); maxurka, op. 60, No. 3 (Chopin); Etude (Chopin); Barcarolle (Chopin); 'Erikina' (Schubert-Lisat); 'Libdenissum'' (Schubert-Lisat); 'La Jongleuss'' (Moszkowsky); Nor-eletto (Schuman); Arabenics on themes from Johann Strauss' valse, 'The Blue Danubs''; Walkurenritt (Wagner),

Poetry, art and money all go to make a successful, modern piano recital. There are also other attributes. But if poetry and art attend without the evidence of money, recitals would soon lose their educative refined value. There are any number of cheap, admission-free plano recitals in most large cities, but do real musical students and music lovers attend them? It is noteworthy that at the plano recital of the season give at Parson's Hall, last night, by Beatrice Norke, a society as well as a cultured nusical audience attended and filled the Dierke. seating capacity of the hall at \$1 each.

****************************** PORTLAND BOY WINS A BHODES

SCHOLARSHIP.

Samuel E, Ellot, Who Ranks High in Studies.

E. Ellot, son of Dr. T. L. Summel. Ellot, of this city, has received the Rhodes scholarship to Oxford from Missouri. He will take up residence at Oxford at the Autumn semester in He will graduate from Washington University, of St. Louis, this Spring, having prepared for college at the Portland Academy, finishing in 1000. The scholarship carries with it a yearly allowance of \$1500 for three

casm.

Complaints have recently ben heard

THE MORNING OREGONIAN, WEDNESDAY, APRIL 19, 1905.

It was argued, it was not necessary to go to the state courts for all of the con-tentions had been settled by the United States Supreme Court in its decision in the Porto Rican case, the Crowder case, and this decision was in favor of the Government's contention.

In touching on the part of the plea which alleged bias and non-qualification on the part of Mr. Heney, the speaker anld:

"The effect of the plen is to try me The effect of the plea is to try ma-as to my blas and my residence. I hold that if the case should be tried as to whether or not I am, or was, prejudiced that it may go down into history but as an incident more to effect the risibles of the bar of the United States than as one to cause solver thought or considone to cause sober thought or consid-

erati "The point is raised that I am not a resident of this district, that I am an "alien" who has come here, and that there is great danger from blas and prejudice in trying these cases. I was of the opin-lon that I was an American citizen, a brother American, one who held to the democratic doctrine that when the United States took the Philippines the Consti-tution followed the flag into the Islands. And yet it is argued that there is great consequence of evil in my coming here to conduct these investigations, that I am

brought in the set of the set of

here entered into secret conclave to work The second day of argument in the my spite on those whom I do not know Mitchell abatement proceedings has been

Technicalities of Defense.

ended and the question has gone to Judge Bellinger for his decision, which will be announced upon the opening of court on "It seems to me." concluded Heney turning to Bennett and speaking in the direction where sat the silent figure of Senator Mitchell. "It seems to me that in-Monday next. Throughout the day a silent crowd of interested spectators and listeners packed the little courtroom on the third floer of the Federal building, and in spite of the dry discussion of legal niceties, stood unshifting from the beginning until the close of the samion. stead of wishing an early trial and an imscene of wishing an early trial and an im-mediate one, as has been claimed by some of the defendants here, there is a great desire to try out questions of technicality rather than either guilt or innocence of the charges brought under the indict-At the opening of the morning session United States District Attorney Heney asked permission to Introduce citations which he had overlocked the day before ments." Heney in closing his argument called

as an illustration the case of the Govin support of his contention that the pleas in abstement had been filed too late ernor

"It is required in the statutes," he said, "that the Governor shall reside at the capital. There is no allegation made that his official acts are invalidated beto be of effect. The permission was given, and he died the Cobban case, by Judge Deady, and the Agnews case in 165 United States to maintain his point. He showed cause his family remains in Portland or because Governor Chamberlain makes an occasional trip to Portland to visit that by these decisions he stood on solid ground, as in the latter case It had been held that a plea filed in six days after them.

the return of the indictment had been filed at too late a date and the plea should not be entertained. "We are willing to try the case of Glustin," continued Heney, "but we want to try it before the court. It is absurd to think of trying such a case before a jury. Such action will be unjustifiable." Bennett was allowed through the court-esy of the court to answer Heney on

some points. The manner in which the jury was im-paneled was one of the most serious things in the case," contended Bennett. "The first two men were excused and oth-ers were put in their places contrary to the statutes. Then another man was added which shows the body to have been a shifting and variable one. It erems a shifting and variable one. It seems, therefore, that if we are entitled to trial on the validity of jurors the delay should be taken.

In Behalf of Mitchell.

"This case," continued Bennett, "Is a "This case," continued Bennett, "is a technical one, and involves no direct charge of moral turpitude, other than that Senator Mitchell might have un-knowingly taken money as a member of a firm for services done by that firm which were not according to the Federal law governing members of the Senate. In those other cases we have waived all rights of demurrer, even though we rights of demurrer, even though we thought we could overturn the indict-ments, and are ready and willing and waiting to go to trial. If of all these cases this present one is the only one in which the Government is ready to try, then it would even that the momenta

which the Government is ready to try, then it would seem that the mountain has labored and come to the mouse." "I deny that Mr. Heney was a de facto officer or that he was rightfully one. A man cannot be a clerk or an officer unless he resides in the district. The law was passed in the latter part of Grant's Ad-ministration when men from New York went to the South to accept Government offices with their carnet hear in their offices with their carpet bags in their hands and their trunks in their hotels,

who held office until the term expired and was recognized as unjust, and pro-This hibited by law, and it has been so long since the law was violated that its ex-istence had been forgotten until this case brought it before the people again. I do not think that President Roosevelt wor he had known that he was breaking the law. do not know how Mr. Heney office."



Subscribed and sworn to before me this 17th day of April, 1968.

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you may.



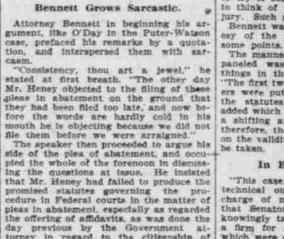
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press in abatement, especially as regarded the offering of affidavits, as was done the day previous by the Government at-torney in regard to the citizenship of George Giustin and the prejudice of him-self towards the defendants. Bennett sent towards the derendants. Hennett insisted that since a great part of the old settlers of the state had come from Missouri their descendants were bred of their disposition and would like to be shown, rather than to take the word of anyone for a thing so serious in effect as the production or nonproduction of the statutes desired statutes desired

FULLY ARGUED

cision on Next

Monday.

Remark Upon the Contention.

and in Response Bennett

Grows Sarcastic.

Senator Mitchell's attorney argued that the common law and not the statutes of a state governed the selection of a jury by Federal courts. The common law recognized the plea of abatement as the proper means of testing the legality of a grand jury and upon this fact the de-fense based in part its claim.

Urges Jury Trial. The defendant argued Rennett had th

Ward.

WILL ELECT & MAY QUEEN .- At a mee of the Michigan Society last night ing at Ringler's Hall it was decided to hold an open meeting May 2, at which a May Queen will be selected by ballot to preside over the festivities. There is to be a programme of music and dancing and refreshments will be served.

HURT BY FALLANG EARTH .- Frank Mideberger sustained a fracture of the left ing yesterday morning while excavating at Seventh and Lovejoy streets. He was removed to Good Samarital Hosiptal where City Physician Zan set the broken bones. The patient is expected to recover rap-1610

NORTH PACIFIC STRAMBBIP CO.'S commo dious steamship Rosnoke, 2400 tons, sails for San Francisco and Los Angeles, calling at Coos Bay and Eureka, Thursday, April 29, from Columbia Dock No. L. Ticket office, 251 Washington street. H. Young, agent.

S. L. HAVE, who has been a resident of Corvallis for the past 17 years, and who is well and favorably known throughout the state, has accepted the position of assist-ant cashier in the Oregon Savings Bank and assumed his duties there Monday morning.

WILL PERFECT ORGANIZATION .- The Sellwood Republican Club will meet tonight at \$ o'clock in the Firemen's Hall to hear the report of the committee on con-stitution and by-laws and to perfect organization.

STUDY CLASS TO MEET .- The Apochrypa Study Class of the Council of Jewish Women will meet today at 2:30 P. M. in the Selling-Hirsch building. Papers will read on Esther, Baruch and Jaremiah.

LECTURE AT BRAMEN'S INSTITUTE ----Meeting at States a Institute of Holy Week, with sacred songs, will be given by the chapiain at the Seamen's Institute, 100 North Front street tonight at \$ o'clock. "OUR ISLANDS."

Several sets of "Our Islands" for sale cheap. A few damaged sets at your own price. Address or call at Oregonian business office.

MOTHERS' CLUB TO MEET .-- The Teachers and Mothers' Club of the Brookly'n school will hold its monthly meeting Friday afternoon in the Assembly Hall at 2:39 o'clock.

FRED BUTLER Saturday night, White Temple. Only a few tickets left, at Allen & Gilbert-Ramaker's. Those selling tick-ets to report by Thursday night.

PASSOVER AT BETH ISRAEL. -The Pass-ver festival begins at the Temple Beth Israel this evening and will be continued at 10:58 o'clock in the morning.

Fon LEASE.—Near Fair grounds. 55 by 30 feet, 100 by 100 feet, and 100 by 300 feet. Reasonable. F. V. Andrews & Co., Hamilton building.

A FIRST-CLASS DRUGSTORE will occupy the corner 18th and Jefferson by June L. J. A. Rupert, 460 Jefferson street.

For RENT: long lease: bldg. 30 by 80, on 12th, near Glisan. Phone Main 6340.

THE CALUMET Restaurant, 149 Seventh. Fine luncheon. 35c; dinner 50c. ACME OIL Co. coal oils. Phone East 789. Buy coffee everywhere; try Wooster's.

Arrested for Making Handbooks.

Sheriff Word started out yesterday afermoon to break up handbook pools which means the selling of pools on the mirects on horse races run on the Eastern and Southern tracks. The Sheriff took a walk along Alder street between Fourth and Fifth streets, which has been the center for this sort of gambling, and arrest-ed T. Basterbrock, a colored man, and a white man who gave the name of T. D. white man who gave the name of T. D. Smith. Both were taken to the County Parker's Ginger Tonic. Parker's Hair Belsam is life to the hain

towns, musical audiences have been very slim even where the talent was of the best, because the managers insisted on a money charge. It is, therefore, creditable to Mrs. Dierke's undoubted ability and personal popularity that each of her recitals is better than the one preceding it, and that the serious vature of the music chosen is fully appreciated by competent musical people who buy tickets and ap-

plaud her work. It is true that Mrs. Dierke's art is broadening until one scarcely knows where it will stop. It is not too much to say that her reputation as a high-class plan-iste is not bounded by Portland, or even by Oregon, for today she can honestly take her stand among the very best of younger American plano virtuosi. Prin-ter's ink has largely made world-famous artists whose names are on every one's lips, because they have traveled far from their own habitation among those who

personally know them not. The time will come when travel will still broaden Mrs. Dierke's art, and we shall then be content to pay more than a sliver dollar hear her play. Beauty of tone, brilliant technique, and dramatic insight were all in Mr. Dierke's playing last night. Her best numbers were the noble Mendellsohn fugue, and the Schubert-Liszt "Eri King." She is a true poet of Chopin's most romantic moods. The floral tributes were the most hand seen at a Portland concert for years. The encores were hearty ones. J. M. Q. J. M. Q.

WHERE TO DINE.

All the delicacies of the season at the Portland Restaurant, fine, private apart ments for parties. No Wash., near 5th

South Portland Wants Library.

A public meeting was held last night at the annex of the Fourth Presbyterian

Church, First and Gibbs streets, to dis-cuss the feasibility of a public library for South Fortland. The meeting was for South Portland. The meeting was called to order by Rev. M. M. McClelland and the subject was discussed by Milton W. Smith, A. R. Spreadborough, J. Cook, Mr. Lawann and others Mr. Lawson and others.

A. R. Spreadborough was unanimously elected secretary, on Milton W. Smith's motion. A committee was appointed to organize and report its work at the meet-ing which will take place Thursday evening next, at the same church. E. C. Bronaugh, chairman, Rev. M. M. Me-Cleiland, Mr. Lawson and A. R. Spreadborough constitute the committee

CARD OF THANKS.

To all those who have extended such kindly aid and sympathy during the sick-cess, death and funeral of our belowed inspiter and sister. Elima Jessie Ruep-pell, and also to those who sent such seautiful wreaths and coally flowers, and tiso to the Rev. Montgomery, who de-livered such an excellent and touching uncral oration, we hereby express our incere thanks. JOSIE RUEPPERT.

JOSIE RUEPPELL

Arlington. WILLIAM RUEPPELL RAYMOND RUEPPELL EDWIN RUEPPELL.

Escapernong is the finest product of the Scuppernong, a native grape, identified with the earliest settlement of the country. It is a delicious, refreshing white wine, moderately sweet, but with while wine, moderately sweet, but with sufficient natural fruit acidity to make a perfect table wine, having an exquisite fruit aroma and "bouquet." W. J. Van Schuyver & Co., Inc., distributors.

right to a trial by jury on the questions of fact as raised by the ples. The irregularity alleged in the creation of the grand jury brought out questions of fact, and therefore the defense claimed the right to try the case by jury, and not before the court alone. It was also contended by the speaker

that the court had no right to allow Peebles and Buffum to be sworn on the jury after that body had been impan-neled and that this act invalidated the

actions of the jury. In the afternoon H. S. Wilson resumed the argument for the defense, stating to the court that he was appearing for Ma-rion R. Biggs and Dr. Van Gesner. Insomuch as there was a slight difference in the plea of abatement filed by him for his clients he wished to speak on the plea. His plea differed in that there was no allegation of bias or prejudice against the defendants on the part of the District Attorney. Wilson held it to be a fact well known

that the state practice did not authorize a change in the panel of a jury after that panel had been sworn, except it be for the serious sickness of a member or for some other reason disqualifying him for service. The court had no power to change the panel for any purpose. It was his opinion that if the law allowed such a change to be made the court could call men to serve on the jury after the excuse of certain members until the jury could be influenced to bring any indictment desired by the prosecuting officers. It was a rule of law that those things which might be of bad effect and danger-

ous should be guarded against. Cites Jury's Qualifications.

It was also argued by Wilson that unless there was especial power conferred upon the court to change a juror the court must abide by the statutes and could not alter or change unless they authorized it so to do. Citation was shown in a case where

what was recognized to be a good jury in regard to the individual qualifications of the jurors was invalidated for the

or the purchas what invaluates for the penal subsequent to the time the first jurors were sworn. The attorneys held, therefore, that the recent grand jury was illegal and its acts vold for the rea-son that Peebler and Buffurn had been inverse after the body had been inverse. sworn after the body had been impan-

Wilson further argued that it was contrary to the notions of justice prevailing for a man to be sent into the state from another district and here hold a quasijudicial position.

Hency followed Wilson with his an-swer to the arguments of both Bennett and Wilson and waxed a little facetious

in his opening. "Judge Bennett," he said, "gives me the credit for having discovered the fact that section 722 of the revised statutes bore on the case under consideration, which fact no one had ever known be-fore me. I wish to disclaim such in-ventive power and to own that I stole ventive power and to own that I stole my idea from Judge Thayer and Justice Brewer, both of whom had discovered it before me as I shall now read." Hency then read an opinion in which both Judge Thayer and Justice Brewer concurred in applying the section to the qualifications of three.

of jurors. "Now," said Heney. "I don't want to have to bear the burden of this decision. It is such a preposterous thing and so ill-applied that I would rather let such men as Judge Thayer and Justice Brewer be charged with its application."

Heney Makes Argument.

Hency argued that the laws in relation to pleas in abatement were in great con-fusion in the different states and that citations from state cases could be found to fit any contantion and condition. But and presented in, and inducement

Court Appointed Heney.

"I appointed Mr. Heney," interrupted Judge Bellinger. "I had reason to believe that the Administration desired him to be appointed, and, therefore, I appointed 'Well, I didn't know." continued Ben

nett, 'but it is right that the man who is District Attorney should be a resident of the district, familiar with its condiof tions, bound by its customs, surrounded and tempered by the opinions of his fellow-men. This is one of the great safe-guards, otherwise, some one might come from California or New York and by his from California or New York and by his desire for notorjety, or to get his name and ploture in the papers, cause to be indicted men by the fifties and the hun-dreds to gratify this desire. And in-fluenced by this desire he might indict those whose greatest crime had been their long service for the good of the state, while he allowed thugs and thieves by practice and profession to go free by practice and profession, to go free

and unwhipt of justice. "We are ready to verify our contention "We are ready to verify our contention that Mr. Hency went before the grand jury and by his influence prejudiced the jury against a defendant. We ask that this be granted us." Upon the conclusion of Bennett's argu-ment the court announced that the de-cision in regard to the plea of abatement

would be given on Monday morning next at 10 o'clock.

W. H. Davis, of Albany, filed a dew. H. Davis, of Albany, hied a de-murrer to the indictment against him for conspiracy, while Ira Wade pleaded not guilty of the charge against him. J. K. Weatherford, of Albany, appeared for both men. Affidavit Made by Heney.

One of the main allegations made in the Mitchell plea of abatement was that Francis J. Heney had sought to stir up prejudice against the defendant by his public utterances and his private acts; that the prosecuting officer was vindictive and prejudiced and of blased mind, and that he remained in the grand jury-room and by his presence intimidated the jurors and influenced them to bring in-dictments which they would not other-

wise have done. In opposition to this Mr. Henry introduced the affidavit printed herewith. which was presented in open court:

icis J. Heney, being duly sworn, depose

gon-ma

Frat

In the Circuit Court of the United States for the District of Oregon. United States of America, vs. John H. Mitchell-Affidavit. United States of America, District of Orepromptly and well done.

GIBSON and says: That he bears no malice or prejudice what seever toward John H. Mitchell, and has no

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W. L. ROSENSTEIN, 124 California st., San Francisco, Cal., Representativa

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